IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.1778-M of 2005 (O&M)
Date of Decision 09.02.2007

Surinder Kumar and another

...Petitioners

Versus

Union Territory Chandigarh and others

...Respondents

Coram: Hon'ble Mr. Justice S.S.Saron

Present:- Mr. V.Ramswaroop, Advocate for the petitioners.

None for respondent No.1.

Mr. Vinod Ghai, Advocate
for respondent No.2.

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S.S.Saron, J.(oral)

The present petition has been filed under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') for quashing the complaint Annexure P-11 titled "V.N.Sikri Versus Surinder Kumar and others" in respect of offences under Section 420/467/468/471/120-B of the Indian Penal Code (for short 'the IPC').

The petitioner had earlier filed Crl.Misc.No.42111-M of 2004 for quashing the said complaint as well as the summoning order dated 9.8.2004 (Annexure P-15). The said petition was disposed on 21.9.2004 by passing the following order:-

> "Learned counsel for the petitioners prays that he may be allowed to withdraw this petition, at this stage, so as to enable him to avail remedy under Section 245(2) Cr.P.C. He further

prays that the accused in the case are to come from distant places and, therefore, their presence before the trial Court may be exempted.

Criminal Misc. Petition is dismissed as withdrawn, at this stage.

The petitioners may, however, file an application in terms of Section 205 Cr.P.C. seeking their exemption during trial and in case such an application is filed, the same shall be considered by the learned trial Court sympathetically and in accordance with law."

Thereafter, the petitioners filed Crl.Misc.No.47692 of 2004 in Crl.Misc.No.42111-M of 2004 for reviving the Criminal miscellaneous petition, as according to the learned counsel, the petitioners in fact had assailed the summoning order also whereas the trial Magistrate has no power to review and recall the order summoning an accused in view of the judgment of the Hon'ble Supreme Court in the case of **Adalat Prasad vs. Rooplal Jindal and others** J.T.2004(7) S.C. 243 wherein it has been held that the Magistrate has no power to recall the summoning order. The earlier judgment in the case of **K.M.Mathew vs. state of Kerala and another** J.T.1991(4) S.C.464 has been over-ruled. The said criminal miscellaneous application was dismissed vide order dated 2.12.2004. However, petitioners were given liberty to file a fresh independent petition or pursue their remedy under Section 245(2) Cr.P.C. in accordance with law, if so advised.

Learned counsel for the petitioners has contended that the summoning order which has also been assailed in the present petition

would not be recalled by the trial Magistrate in view of the judgment of the Hon'ble Supreme Court in **Adalat Prasad's** case (supra). Therefore, it is contended that the petitioners have no other remedy except to invoke the jurisdiction of this Court under Section 482 Cr.P.C.

In response, Mr. Vinod Ghai, Advocate for respondent No.2 has submitted that the pre-charge evidence is being recorded by the trial Court and the case is fixed before the trial Court for 28.2.2007. It is submitted that the petitioners have the remedy for seeking their discharge in terms of Section 245(2) Cr.P.C. after conclusion of the pre-charge evidence. Therefore, the present petition is misconceived.

I have given my thoughtful consideration to the contentions of the learned counsel appearing for the parties. It is not disputed that the pre-charge evidence is being recorded by the trial Court and the case is fixed for recording of evidence on 28.02.2007. Therefore, even if the petitioners cannot seek recall of the summoning order dated 9.8.2004, they would still be entitled to their remedy in terms of Section 245(2) Cr.P.C. after the pre-charge evidence has been recorded. Besides, during the pendency of the proceedings before the learned trial Magistrate, this Court vide order dated 21.9.2004 gave the petitioners liberty to file an application in terms of Section 205 Cr.P.C. for seeking their exemption.

Learned counsel for the petitioners has submitted that the necessary exemption has been granted to the petitioners.

In the aforesaid circumstances, in my view it would not be appropriate at this stage to interfere when the trial Court is seized of the matter and pre-charge evidence is being recorded. The petitioners

undoubtedly would have their remedy for seeking their discharge in accordance with law after the pre-charge evidence is concluded.

In the circumstances, this petition is premature and the same is, accordingly, dismissed.

February 9, 2007 **(S.S. Saron)**
gsv **Judge**